

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 8591 of the Fish and Game Code and to implement, interpret or make specific sections 8590-8594, 9000, 9001 and 9015 of said Code, proposes to amend sections 180.1 and 180.3, Title 14, California Code of Regulations, relating to spot prawn conversion program.

Informative Digest/Policy Statement Overview

In February 2003, the Fish and Game Commission adopted a prohibition on the use of trawl gear for the commercial take of spot prawn, *Pandalus platyceros*, (OAL File #03-0314-03s) resulting in displacement and economic impact to approximately 45 commercial trawl vessels which had previously participated in the fishery annually. The Commission directed the Department to develop options for a conversion program that would add a limited number of additional permits to the existing spot prawn restricted access trap fishery. These permits would be available to owners of spot prawn trawl vessels who met minimum vessel-based landing requirements.

Current regulations establish the restricted access spot prawn trap fishery program with Tier 1 and Tier 2 permits, which became effective April 1, 2002. For the 2003-2004 fishing season, seventeen Tier 1 permits and five Tier 2 permits have been issued by the Department. Tier 3 trawl conversion permits are proposed for issuance that would regulate trap fishing activity subject to the same conditions that apply to the existing Tier 1 spot prawn trap vessel permits. The Department proposes that the Commission consider issuing between 1 and 17 Tier 3 permits, and further proposes that the Tier 1 and Tier 3 combined capacity goal be set at 17 permits; the same as the current 17-vessel capacity goal in place for only Tier 1 vessels.

When selecting the optimum number of conversion permits to issue, it will be critical for the Commission to balance the potential harm to the existing trap fishery participants who would face increased competition against the economic loss already suffered by vessel owners now precluded from taking spot prawn utilizing trawl gear, many of whom relied on the fishery for nearly 100 percent of their income.

The goal of the conversion program is to provide continued access to the spot prawn resource for those fishermen who most relied on the spot prawn trawl fishery prior to its closure in 2003. The Department has developed a range of initial qualifying criteria that allows the Commission to select from traditional minimum landings levels or a point system, as described below.

The Department proposes the Commission consider limiting the trawl fishery catch history to a qualifying window of 1994 – 2001, although the Commission may select a window period that starts any time between 1990 and 2001, and ends any time between 1999 and 2002. This wide range of dates is provided by the Department based on comments received from interested or affected individuals or groups.

Tier 3 Initial Issuance Criteria Options

Since trawl landings of spot prawn are generally larger than those made by trap, a range of volumes that was much larger than those used in the qualifying criteria for Tier 1 trap permits is

being proposed. The Commission may select qualifying criteria that would include a minimum catch level over many years in total (between 1,000 to 150,000 pounds), or a minimum annual catch level (1,000 to 20,000 pounds) in each year or in each of a number years, participation (between 1 and 100 landings) in each year or in each of a number years, or the number of landings (1-500) over one or more years or over a number of years.

Another qualifying option factors the purchase of the 2000-2001 spot prawn trawl observer permit into the qualifying criteria. This option, in combination with others, would recognize the voluntary participation of these vessel owners in the management of the fishery.

To demonstrate recent participation in the fishery, an option to have at least one spot prawn landing in either 2000 and/or 2001 is provided for use in conjunction with a window period that does not encompass those years

Prawn Point Option

In order to preserve diversity in the composition of the trap fishery participants and make the issuance of Tier 3 permits a more equitable process, the Department also created an option utilizing a prawn point system to determine qualification criteria for issuance of a Tier 3 permit. This point system could be used to qualify for initial permit issuance or to qualify vessels for a lottery that may be held for some or all of the converted permits available. As proposed, prawn points would be awarded to a vessel based on three factors:

- One hundred prawn points would be given for each calendar year the vessel made spot prawn landings with trawl gear during the qualifying period;
- One prawn point would be given for every 200-2000 pounds of spot prawn the vessel landed with trawl gear during the qualifying period; and
- One prawn point would be given for each landing of spot prawn a vessel made with trawl gear during the qualifying period.

The Commission may select from a range of 600-1600 prawn points to qualify for a permit and/or a lottery.

Lottery Option

Whether traditional landings criteria or the prawn point system is selected for initial permit issuance, the line that separates the qualifiers from the non-qualifiers is difficult to draw from a policy standpoint. If the Commission believes, for example, that 11 individuals are more or less equally deserving of a conversion permit, yet they wish to issue fewer than 11 permits, the Commission may elect to have a lottery for some or all of the permits. If the proposed lottery is adopted, the Department will notify vessel owners who meet the eligibility requirements.

Regardless of what initial issuance criteria are selected, some vessel owners who landed spot prawns in the past will not qualify for a permit. The Department is trying to accommodate those vessel owners who relied most heavily on the spot prawn trawl fishery in terms of factors described above, while at the same time attempting to avoid fishery overcapitalization and gear conflicts in available trapping grounds.

Transferability of Tier 3 Permits

A three-year waiting period from the initial issuance of Tier 1 permits is required before they can be transferred, with no minimum landing requirements to qualify for transfer. Tier 1 permits may be transferred beginning on April 1, 2005. To be consistent with Tier 1, a three-year waiting period is proposed for the transfer of Tier 3 permits, also with no minimum landings requirement, making them fully transferable on October 1, 2007.

Making Tier 3 permits transferable at the same time as the Tier 1 permits would result in inequity to Tier 1 holders who have had to wait for three years to sell their permits. Moreover, since very few Tier 1 permits are likely to come available on the market after April 1, 2005, their value is likely to be high. If Tier 3 permits were also transferable beginning in 2005, more permits would be on the market, the value of the permits would decrease, and they would most likely be sold to individuals interested in immediately participating in the fishery at high effort levels.

Fees and Filing Deadlines

The Department proposes that Tier 3 permits have a permit fee of (\$250.00-\$1000.00), late fees of \$50.00, and a \$200.00 transfer fee. Although Tier 1 and 2 permittees currently have a \$250.00 permit fee, the price is not commensurate with the value of the resource and the amount of Department time spent managing this small but valuable fishery. Application deadlines for initial issuance of Tier 3 permits, including deadlines for late fees, and for appealing denied permits, are proposed to be equivalent to the time increments required for Tier 1 permits. All other administrative aspects of the Tier permit structure are proposed to be the same as those of Tier 1 permits.

Vessel Owner on Board Permitted Vessel

Current regulations require the owner of the permitted spot prawn trap vessel to be on board when spot prawns are being taken, except that one additional operator may be designated during a license year. The Tier 1 trap permittees have proposed amendment to this regulation to allow a replacement operator only in the case of a medical/hardship case for both Tier 1 and 3 permittees. They believe that hired operators have no stake in the fishery and frequently create a disorderly fishery because they lack experience setting trap strings and have little regard for the trap gear already on the grounds. However, the trawl fishermen believe that there should be no restriction on replacement operators. The Commission may choose the option of allowing either one replacement operator or any number of replacement operators. In addition the Commission may choose the option of allowing for a replacement operator or operators only in the case of a medical or hardship reason.

Reorganization and Clarification of Existing Regulatory Language

Several non-substantive changes are proposed to the existing regulatory language of 180.1 and 180.3 for clarity, consistency and ease of enforcement.

Section 180.1 on Spot Prawn Fishing defines restrictions on traps used in the fishery. In subsection (a) the reference to the closed season in 2000 is proposed for removal since the effective dates have passed. Subsection (a)(1) specifies that traps may be set and baited beginning at 0600 hours on January 31. This is the last day of the closed season in southern

California. Clarifying language was added to specify that the January 31 date applies only to waters south of a line drawn due west from Point Arguello, and traps used north of the Point Arguello line may be set and baited beginning at 0600 hours on July 31, the last day of the closed season in northern California.

Clarifying language is proposed to be added to (a)(2) to specify that traps must be out of the water prior to the beginning of the closed season of May through July north of Point Arguello as is already required during the closed season of November through January south of Point Arguello. Subsection (c) (Trap Limits) would clarify and make specific the trap limits for each of the three permit tiers. The Tier 2 trap limit previously contained in Section 180.3 (b)(2)(C) is proposed to be moved to subsection 180.1(c)(2). Subsection (e), which dealt with an observer fee requirement for the specific period of July 14, 2000 to March 31, 2001, is proposed for removal since effective dates have expired.

Section 180.3 defines the conditions, qualifying criteria, and administrative details of a two-tiered restricted access spot prawn trap fishery. The Section is proposed to be modified so that existing regulations governing the Tier 1 fishery also apply to the Tier 3 fishery. This requires reorganization of existing regulatory text defining permit conditions, initial issuance criteria and transferability provisions, resulting in the addition of new subsection headings throughout for clarity. Subsection (b) will be retitled and a classification for Tier 3 or conversion permits will be added. Subsection (c) becomes specific to the initial issuance criteria for each type of permit. Subsection (d) now addresses a capacity goal of 17 permits for Tiers 1 and 3 combined.

Existing provisions for mechanisms dealing with overcapacity and under capacity situations are proposed for elimination since they only involved the upgrade of a Tier 2 permit, or the 2 for 1 sales of a Tier 1 permit. Given the number of permits issued for the 2004-2005 fishing season, and with the future addition of Tier 3 permits, neither mechanism for transferability is possible given the future capacity of the fishery following implementation of the conversion program.

Proposed subsection (e) now specifies the initial issuance application deadlines for all three types of permits. The proposed application for Tier 3 permits is incorporated by number and reference. Subsection (g) addresses permit renewal for all three types of permits and again incorporates the applications by number and reference. Other non-substantive changes were made in the subsection for clarification.

In subsection (l) the change of ownership of a spot prawn trap vessel permit was addressed for Tier 3 with the same requirements as for Tier 1, although different dates shall apply if adopted. Regarding change of ownership of a spot prawn trap vessel permit; existing regulatory language was clarified so that in the event of death of a transferable permit holder, the permit may be transferred to the decedent's estate, rather than only to an heir. Proposed regulations would still require that the application for transfer be received by the Department within one year of the decedent's death. In subsection (m) appeal provisions for initial issuance of Tier 3 are outlined and parallel Tier 1 only with different deadlines. In subsection (n) dealing with fees, Tier 3 was added with fees identical to those of Tier 1 with the exception of the permit fee where a range is provided.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, California, on Tuesday, May 4, 2004 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Elk Valley Rancheria, 2500 Howland Hill Road, Crescent City, California, on Friday, June 25, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 18, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than June 25, 2004 at the hearing in Crescent City, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Robert R. Treanor or Sherrie Koell at the preceding address or phone number. **Kristine Barsky, Senior Marine Biologist, Department of Fish and Game, phone (805) 985-3114, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action would allow a limited number of trawl vessels to convert to trap gear. Future trap fishing opportunities would be offered to vessel owners who qualify for issuance of a Tier 3 permit, and therefore would provide a future economic benefit for both these vessels and the fish buyers they would supply. Alternatively, depending on the number of new trap vessels allowed in the fishery, the current Tier 1 trap fishery potentially may suffer negative economic consequences as the result of increased competition on the fishing grounds and in the marketplace.

Conversion of trawl vessels to trap vessels could have a negative effect on the existing trap fishery participants, who are also considered individual businesses. If historic trawling grounds do not become productive new trapping grounds, and there is gear congestion within the historic trapping areas due to the addition of Tier 3 trap vessel permittees, current trap permittees could experience some unquantifiable loss of income. Current Tier 1 trap permits, which may be sold beginning April 1, 2005, may also lose some market value as the total number of trap permits increases.

Every spot prawn buyer is considered a business. Any transfer of market share, or competition, between the existing trap fishermen and newly converted fishermen would not result in a loss of business or the ability of California businesses to compete with businesses in other states. In fact, the buyers would likely benefit if more spot prawns were harvested and available for purchase.

Local economies and port communities to the north of Monterey County may benefit from spot prawn fishing activities by newly converted trawl fishermen utilizing traps in what were historically trawl grounds for prawns should trap fishermen successfully attempt to utilize these currently unfished areas. Trap fishermen typically land nearly all their spot prawn (99 percent by value) in coastal ports south of Santa Cruz County. Department landings data from the years 2001 and 2002 indicate that less than 1 percent (by value) of trap caught spot prawn are landed either in Santa Cruz County or to the north. Conversely, spot prawn trawl fishermen, in the years 2001 and 2002, landed over 32 percent (by value) of their prawns in ports located in Santa Cruz County and to the north. In the years 2001 and 2002, the prawn trawl landings in the coastal counties of Santa Cruz north to the Oregon border represented as much as \$864,000 in total aggregate economic output demand. Of this total aggregate output demand, approximately 32 percent is spent locally for fuel, repairs, ice, bait, and various consumables in the port communities.

The Commission has made an initial determination that the amendment of these regulations may have a significant, statewide adverse economic impact directly affecting businesses. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, depending on which options are ultimately chosen, there may be incremental fees levied on fishermen converting to prawn trap fishing. Tier 3 permit fees may take the form of trap permit fees (\$250-1000) and in some cases permit transfer fees (\$200). New Tier 3 permittees will have to invest in traps and associated rigging, which could run \$35 to \$75 per trap, with no guarantee that converting to a new gear type will be profitable or produce an income equivalent to what they realized in past years using trawl gear.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 20, 2004

Robert R. Treanor
Executive Director